

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

ANTHONY BARONE, JR.,  
  
Plaintiff,  
  
v.  
  
STATE OF NEVADA et al.,  
  
Defendants.

Case No.: 2:22-cv-00354-APG-EJY

**ORDER  
and  
REPORT AND RECOMMENDATION**

This matter comes before the Court on Plaintiff's application to proceed *in forma pauperis* and Complaint. ECF Nos. 1 and 1-1.

**I. IN FORMA PAUPERIS APPLICATION**

On February 24, 2022, Plaintiff, a non-inmate individual, filed a complete application to proceed *in forma pauperis*, which the Court grants below.

**II. SCREENING THE COMPLAINT**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes *pro se* complaints and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *id.*).

Plaintiff brings a claim against Defendants State of Nevada, Aaron Ford—the Attorney General for the State of Nevada, Merrick Garland—the Attorney General of the United States, and

1 additional unidentified defendants. ECF No. 1-1 at 1 and 2. Plaintiff claims violations of his Second,  
2 Ninth, and Fourteenth Amendment rights. Defendants allegedly prohibited “Plaintiff from his  
3 inalienable right to keep and bare arms” and right to “own, possess, and bare arms (firearm) under  
4 threat of prosecution and imprisonment.” ECF No. 1-1 at 3. Plaintiff requests “the lifting, removal,  
5 and protection of law from the Prohibition” preventing him from owning a firearm. *Id.* at 4.

6 In considering whether the complaint is sufficient to state a claim, all allegations of material  
7 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship*  
8 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the  
9 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide  
10 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
11 A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the  
12 complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff should be given  
13 leave to amend the complaint with an explanation of the complaint’s deficiencies. *Cato v. United*  
14 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995). Moreover, Fed. R. Civ. P. 8 requires each Defendant has  
15 “fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Dura Pharms., Inc.*  
16 *v. Broudo*, 544 U.S. 336, 346 (2005) (internal citation and quotation marks omitted).

17 Plaintiff’s Complaint fails to state a claim. Plaintiff’s single allegation that Defendants  
18 prevented him from exercising his right to bare arms, presumably by means of threatening criminal  
19 prosecution, does not provide any facts that tie any Defendant to Plaintiff’s conclusion that his rights  
20 were violated. Plaintiff fails to explain what happened and how, if at all, the named Attorneys  
21 General or other unknown defendants interfered with the exercise of any right he sought to exercise.  
22 In the absence of sufficient factual allegations regarding the alleged violation of Plaintiff’s  
23 constitutional rights, there is no way to determine whether Plaintiff’s Complaint states a claim  
24 against any defendant.

25 Moreover, Plaintiff’s claim against the State of Nevada fails. Regardless of the precise origin  
26 of the doctrine, the simple fact is that a “State [is not] subject to suit in federal court unless it has  
27 consented to suit.” *Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 779 (1991);  
28 *Hans v. Louisiana*, 134 U.S. 1, 16–18 (1890). Here, the State of Nevada has not consented to suits

1 such as the one currently before this Court. NRS 41.031(3) (2009) (“The State of Nevada does not  
2 waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.”).  
3 Therefore, the Court recommends dismissal of the State of Nevada with prejudice.

### 4 **III. ORDER**

5 IT IS HEREBY ORDERED that Plaintiff’s application to proceed *in forma pauperis* (ECF  
6 No. 1) is GRANTED.

### 7 **IV. RECOMMENDATION**

8 IT IS HEREBY RECOMMENDED that the State of Nevada be dismissed with prejudice as  
9 it is immune from suit.

10 IT IS FURTHER RECOMMENDED that Plaintiff’s Complaint (ECF No. 1-1) asserting  
11 claims against Merrick Garland, Aaron Ford and other unidentified Defendants be dismissed without  
12 prejudice with leave to amend.

13 IT IS FURTHER RECOMMENDED that if Plaintiff so chooses, he be allowed to file an  
14 amended complaint correcting the deficiencies no later than **April 4, 2022**. The amended complaint  
15 must include a short and plain statement describing all **facts** underlying the conduct that constitutes  
16 the violations of law Plaintiff alleges. Fed. R. Civ. P. 8(a)(2). Plaintiff must provide each defendant  
17 with fair notice of what he claims, how that defendant is responsible for the wrong alleged, and the  
18 basis for Plaintiff’s entitlement to relief.

19 The Court advises if Plaintiff files an amended complaint that complaint must include all of  
20 the facts and all claims for relief Plaintiff seeks to assert in a form that complies with the instructions  
21 given above. Upon filing an amended complaint, Plaintiff’s original complaint no longer plays any  
22 role in this case.

1 IT IS FURTHER RECOMMENDED ORDERED that if Plaintiff fails to file an amended  
2 complaint on or before **April 4, 2022**, this case will be subject to dismissal without prejudice. A  
3 dismissal without prejudice means Plaintiff does not give up the right to refile the case with the  
4 Court, under a new case number, when Plaintiff is able to file a complaint that states a claim upon  
5 which relief may be granted.

6  
7 DATED THIS 4th day of March, 2022.

8  
9   
10 ELAYNA J. YOUCHAH  
11 UNITED STATES MAGISTRATE JUDGE

12 **NOTICE**

13 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be  
14 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has  
15 held that the courts of appeal may determine that an appeal has been waived due to the failure to file  
16 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also  
17 held that (1) failure to file objections within the specified time and (2) failure to properly address  
18 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal  
19 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.  
20 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

21  
22  
23  
24  
25  
26  
27  
28